

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-05/08-218
)
 Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families substantiating a report of child abuse by the petitioner in January 2008 for allegedly slapping her then-five-year-old son. The preliminary issue is whether the Department's decision should be reversed as a matter of summary judgment based on the Department's representation that it has no basis to prove the allegations without the admission of purported hearsay statements of the alleged victim.

DISCUSSION

The Board has consistently ruled that it is bound by the ruling of the Vermont Supreme Court in *In re C.M.*, 168 Vt. 389 (1998) regarding the admission of hearsay evidence in child abuse substantiation cases. See Fair Hearing No. 20,690.¹ The Board has uniformly held that *C.M.* requires the

¹ A preliminary Order of the Board in Fair Hearing 20,690 contained a lengthy history and legal analysis regarding the admission of hearsay

application of Vermont Rule of Evidence (VRE) 804a in all cases involving child sexual abuse victims.

Under VRE 804a, the four following criteria must be met before hearsay statements of children are allowed as evidence; (1) the child is the putative victim, (2) the child is available to testify, (3) the statements were not taken to prepare for a legal proceeding, and (4) the time, content, and circumstances of the statements provide substantial indicia of their trustworthiness.

In this case, the Department concedes that it cannot justify compelling the alleged child victim to be available to testify at the hearing. The Department further concedes that it has no evidence in the matter other than the hearsay statements of the child. Absent the availability of the child to testify, any alleged hearsay statements of the child cannot be admitted to prove the underlying allegations. Thus, it must be concluded that the petitioner in this matter is entitled to summary judgment in her favor as a matter of law.

ORDER

evidence in child abuse substantiation cases. That ruling is incorporated by reference herein.

The decision by the Department substantiating the report of child abuse by the petitioner is reversed.

#